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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFEREY PATRICK GAULDEN,

Defendant and Appellant.

D077073

(Super. Ct. No. CR116709)

APPEAL from a judgment of the Superior Court of San Diego County,  
Michael T. Smyth, Judge. Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for  
Defendant and Appellant.

No appearance by Plaintiff and Respondent.

## FACTUAL BACKGROUND

Using the statement of facts from this court's previous opinion in *People v. Jeffrey Gaulden* (May, 27, 1993, D015402),<sup>1</sup> on August 19, 1990, Linda Gordon, Ernie Sharpe, and Faye Tyler were smoking crack cocaine together. Marvin Sims was with them but was not smoking cocaine. At approximately 6:00 a.m. they went to get groceries and buy more cocaine. Tyler gave Sharpe a watch to trade for cocaine. Sharp already had some money. At some point a man came up to the driver's side window and asked what they wanted. Sharpe requested \$10 or \$20 worth of rock cocaine. The man put two "dimes" of cocaine in Linda's hand. She, in turn, passed it to Sharpe, who was in the backseat. Sharpe got out of the car and walked across the street with the dealer. Meanwhile, Gordon pulled the car up the street, made a U-turn and parked the car near where Sharpe and the dealer were talking. Sharpe and the dealer walked closer to the car.

Three to four men came toward them. One of the men, defendant Jefferey Patrick Gaulden, pulled a knife and walked toward Sharpe. Sims then got out of the car and approached the group of men. As Sharpe backed away from Gaulden, he fell against the front of the parked car. Gaulden stabbed him and pulled the knife out of his body. Sharpe tried to run but collapsed in the street. Sims approached Gaulden. Gaulden told Sims to get back, or he would stab him. Then he swung the knife toward Sims. Sims jumped back. When Gordon yelled at Gaulden, he threatened to stab her if she did not get back. Gordon and Sims chased Gaulden down an alley where

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<sup>1</sup> Defendant on February 25, 2020 filed a motion to augment the record to include among other records our prior opinion in D015402. On March 20, 2020, we ruled this portion of the motion to augment would be considered concurrently with the appeal, and could be considered as a request for judicial notice. On June 11, 2020, defendant filed an unopposed request to take judicial notice of D015402, which request we now grant.

Gordon saw the drug dealer give Gaulden some “dope.” Sharpe later died of his stab wound.

### PROCEDURAL BACKGROUND

On October 4, 1990, an information was filed charging defendant in a single count, with killing Sharpe, in violation of Penal Code<sup>2</sup> section 187, subdivision (a). The information alleged that in the commission of the crime, defendant personally used a deadly weapon pursuant to section 12022, subdivision (b), and that defendant previously served a prior prison term pursuant to section 667.5, subdivision (b).

On August 9, 1991, a jury found defendant guilty of second-degree murder, and the enhancement for personal use of a deadly weapon true. He was found not guilty of first degree murder. On September 24, 1991, defendant admitted the he had served a prior prison term. The court sentenced him to an indeterminate term in prison for murder. He was also sentenced to two years for use of a deadly weapon and the prior prison term.

Defendant filed petitions for resentencing on September 6 and December 5, 2019. The petitions were brought pursuant to section 1170.95. The trial court took judicial notice of this court’s opinion in the direct appeal, D015402, as well as its own file in the case. On December 28, 2019, the trial court denied the petition, finding, “There is simply no evidence in the record that the jury relied on either the natural and probable consequence doctrine nor felony murder to convict (defendant), who was convicted not as an aider and abettor, but as the actual killer.”

Defendant filed an appeal on December 31, 2019.

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<sup>2</sup> All further statutory references are to the Penal Code unless otherwise specified.

## ANALYSIS

Defendant's counsel has filed a brief in accordance with the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738. He asks we review the record independently to determine if it reveals any issues that would, if resolved favorably to defendant, result in modification or reversal of the judgement.

To assist this court in conducting its own independent review, of the record, counsel directs our attention to those areas of the record impacting whether the trial court erred by failing to appoint counsel, allow briefing or find a prima facie case for relief under Senate Bill No. 1437 and section 1170.95. If there was error, defendant asks that we examine whether the error was harmless given that the jurors were not instructed on felony murder or aiding and abetting.

Pursuant to counsel's request and applicable law, we have examined the record and conclude there are no arguable issues which would result in modification or reversal.

Defendant has been offered the opportunity to personally file a brief on his own behalf. He has not done so.

Defendant has been represented by competent counsel on appeal.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

IRION, J.